

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

GREGORY P. BARNES, DAVID C. BOLLE,
MARY D. WASSON, and JERRY M.
CHAPMAN, on their own behalf and on behalf
of others similarly situated,

Plaintiffs,

v.

THE HERSHEY COMPANY,
Defendant.

Case No. 12-cv-01334 CRB (NC)

**ORDER RESOLVING
DISCOVERY DISPUTES**

Re: Dkt. Nos. 113, 114

In this conditionally certified collective action asserting age discrimination under the Age Discrimination in Employment Act (ADEA), the parties disagree about the scope of discovery in the current phase of the case. On October 11, 2013, District Court Judge Charles R. Breyer bifurcated discovery and permitted discovery to proceed only “as to the issue of waiver.” Dkt. No. 105. The “waivers” asserted by Hershey are contained in documents explicitly releasing any ADEA claims against Hershey. Hershey contends that seven of the nine plaintiffs signed the releases when they were terminated from Hershey. Dkt. No. 113 at 3.

Now the parties present two related disputes challenging the proper boundaries of discovery on the topic of waiver. In the first dispute, the parties disagree about the scope of depositions under Federal Rule of Civil Procedure 30(b)(6). Dkt. No. 113. Hershey proposes that the depositions should be limited to the terminations of the seven plaintiffs who signed releases. Plaintiffs, on the other hand, seek to depose persons with knowledge of the employment separations of approximately thirty Customer Sales

1 Executives (CSE) and Category Development Managers (CDM), which includes 23 CSEs
2 and CDMs who did not return opt-in forms to participate in this collective action.

3 The second dispute concerns documents demanded by plaintiffs. Dkt. No. 114.
4 Plaintiffs demand documents regarding the employment separation of all CSEs and
5 CDMs above age 40 during the period 2009 to present. Hershey asserts that there is no
6 probative value to the separation of the 23 individuals who did not opt into this case.
7 Furthermore, Hershey contends that it has already provided sufficient documentation as to
8 the termination of the named plaintiffs.

9 Judge Breyer has referred all discovery in this case to the undersigned magistrate
10 judge. Dkt. No. 58. The parties appeared for a hearing on the disputes on February 5,
11 2014. Based on the parties' submissions and the representations made by counsel at the
12 hearing, the Court orders as follows:

13 The key question presented is what is the relevance of the terminations of the 23
14 CSEs and CDMs who did not opt in? Would the terminations of these 23 CSEs and
15 CDMs tend to prove or disprove the existence of a group termination program for the
16 named plaintiffs? The Court is not persuaded that discovery of the terminations beyond
17 the named plaintiffs is necessary or useful during this phase of the discovery. Even
18 assuming that there would be probative value of the additional CSEs and CDMs, the most
19 useful discovery will be as to the named plaintiffs. The usefulness of the discovery
20 sought as to all CSEs and CDMs is outweighed by the burden of producing it.

21 A second question presented is whether there should be additional document and
22 deposition discovery as to the employment separations of the named plaintiffs. On this
23 issue, the parties have agreed that the answer is "yes," and they are amid a meet-and-
24 confer process to clarify document custodians, date ranges, and search terms.

25 The Court therefore DENIES plaintiffs' requests to compel Hershey's production
26 of documents and depositions as to the CSEs and CDMs beyond the named plaintiffs. As
27 to the discovery concerning the named plaintiffs, the parties are to jointly report by March
28 5, 2014, on the status of this discovery, setting forth in their report any disputed issues.

1 Any party may object to this nondispositive pretrial order within 14 days of the
2 filing date of this order. Fed. R. Civ. P. 72(a); N.D. Civ. L.R. 72-2.

3 IT IS SO ORDERED.
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5 Date: February 7, 2014

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7 NATHANAEL M. COUSINS
8 United States Magistrate Judge
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